

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF DAN R.) APPEAL NO. 07-A-2183
WILSON from the decision of the Board of) FINAL DECISION
Equalization of Nez Perce County for tax year 2007.) AND ORDER

VACANT LAND APPEAL

THIS MATTER came on for hearing October 26, 2007, in Lewiston, Idaho before Hearing Officer Steven Wallace. Board Members Lyle R. Cobbs, David E. Kinghorn and Linda S. Pike participated in this decision. Attorney John Mitchell and Appellant Dan R. Wilson appeared at hearing. Assessor Daniel Anderson and County Appraisers Jim Peters and Brad Boley appeared for Respondent Nez Perce County. This appeal is taken from a decision of the Nez Perce County Board of Equalization denying the protest of the valuation for taxing purposes of property described as Parcel No. RPL00090050750A.

The issue on appeal is the market value of a bare land parcel.

The decision of the Nez Perce County Board of Equalization is affirmed.

FINDINGS OF FACT

The assessed land value is \$293,152. Appellant requests the land value be reduced to \$75,200.

The subject property is a 1.7 acre unimproved lot located on Bryden Avenue in Lewiston. Appellant purchased subject in 1994 when it had a dilapidated single-family residence on it.

Appellant's appeal centers on two arguments. The first being the Assessor's change on subject from residential to commercial and the subsequent 2007 valuation. If the proper consideration is found to be commercial, Appellant's second argument focused on the sales used by Respondent to support the assessed value.

In 2005, the City of Lewiston adopted a zoning ordinance titled Bryden Avenue Special

Planning Area (hereinafter BASPA). The area was previously zoned residential. The stated purpose of the BASPA ordinance was to “provide a Special Planning Area for development of limited commercial use that minimizes impacts on nearby residential uses, and fostering creative residential development compatible with anticipated high traffic volumes on Bryden Avenue.” LEWISTON, ID. ZONING ORDINANCE § 37-93.1(a) (2005). In other words, the ordinance envisioned both residential and limited commercial uses of property located in this special area. Subject is located in the BASPA. The residence on subject was removed prior to the adoption of the BASPA.

Appellant noted it took several years and many meetings with property owners before the ordinance was passed. The chief concern among property owners, including Appellant, was whether their property would be allowed to remain residential or if it would be automatically changed to a commercial zoning. Both parties agreed the ordinance was designed to give owners the choice between using their property either for residential or commercial use and the city would not change the zoning classification of any parcel absent a request or other action by the property owner.

Subject was assessed as residential property prior to the adoption of BASPA. Appellant argued the County’s new consideration of subject land as commercial was improper and contrary to the intention of the ordinance. Appellant noted when subject was purchased, a single-family residence was situated on the property. Due to the structure’s dilapidated condition, Appellant elected to demolish the residence rather than restore it. The record was unclear as to exactly when the residence was removed, but it was sometime prior to the adoption of BASPA. In any event, subject was assessed as a residential property prior to the 2007 tax year.

Appellant contended subject’s actual use has not changed since its 1994 purchase. No

commercial structures have been built on the property. Nor has Appellant used subject for commercial purposes or otherwise elected to have the property treated as a commercial concern. Appellant reasoned accordingly that subject should be considered a residential property for assessment purposes.

Taxpayer's posthearing brief further argued subject's classification as a commercial property was improper. Specifically challenged was Respondent's position that bare land be valued according to its "highest and best use". Appellant believed consideration must be given to a property owner's "wishes, desires, and the historical use of the property." To this end, Appellant cited the portion of Idaho Code § 63-208(1), which provides "the actual and functional use shall be a major consideration when determining market value for assessment purposes."

Appellant's alternative argument concerned the comparability of sale properties used by Respondent to support subject's value. It was noted Sales 1 and 2 were assessed as residential properties for 2007. If subject was deemed commercial land, then it was argued residential property should not be used to support the assessment. Additionally, the properties were corner lots with greater access than subject. Appellant urged the most weight should be placed on Sale 3. This lot was approximately twice as large as subject and sold for \$3.02 per square foot. Applying this rate, Appellant calculated a \$221,330 value for subject.

Respondent characterized the issue on appeal as a misunderstanding concerning the meaning of "use" and "choice" as they relate to subject's assessment. The County fully conceded no commercial structures had been built on subject. Nor had the property ever been actually used as part of a commercial going-concern. Respondent's position is subject was not being used for residential purposes subsequent to the adoption of BASPA or the 2007 assessment. Therefore it was contended subject should not be valued specially as residentially

used property.

Respondent noted subject was in a unique area allowing residential or limited commercial use. It reported the area could best be described as a mixed-use zone. Where subject lacked a current active use, Respondent determined the highest and best use was commercial. The Assessor pointed to the prevailing trend of property use in the BASPA as moving from residential to commercial. Information was provided detailing the increasing number of commercial permits recently obtained by property owners in the area. The County argued the highest and best use of subject was as a commercial property, which was the current prevailing trend in the area.

It was noted subject was placed on the market from December 2, 2005 to July 1, 2006. The MLS data sheet provided by Respondent indicated subject was offered for sale as a commercial lot with an asking price of \$439,602. This was reasoned to show even Appellant viewed subject's probable use was as a commercial property. Accordingly, Respondent maintained subject's commercial category and valuation was proper.

To support subject's assessed value, the Assessor submitted three (3) sales of properties located on Bryden Avenue. The properties were between 46,368 and 140,573 square feet and sold between \$250,000 and \$425,000 or \$3.02 and \$5.59 per square foot. By comparison, subject land is 73,288 square feet and valued at \$293,152, or \$4.00 per square foot.

Respondent agreed Sales 1 and 2 had been assessed specially as residential property for 2007. This was done where the properties were being actively used for residential purposes at the time of assessment. Idaho Code § 63-602H. Sale 3 was classified and assessed as a commercial property for 2007.

Respondent maintained subject's consideration as commercial property was proper. The County contended its only error was its failure to value the lot as commercial property for the

2006 tax year after the BASPA was finalized.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value or exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Respondent argued the purpose statement contained in BASPA was somewhat redundant for residential property tax purposes as Idaho Code § 63-602(H) reads in pertinent part:

(1) Residential property located in an area which was previously zoned residential but has been changed to a zone other than residential shall be appraised, assessed and taxed as if such property were in an area zoned residential as long a such property is continuously used by the owner thereof solely for residential purposes.

Appellant's posthearing brief contended the above code section is not applicable to subject because the statute only applies to property where residential zoning is changed to something other than residential. BASPA, it was argued, changed the zoning from residential to *residential or limited commercial*, which is argued to be distinct from "other than residential". Appellant advocated the statute's plain meaning be observed and subject's residential status be preserved. This in affect is a claim or argument for entitlement to an exemption.

We acknowledge the plain meaning of a statute must be observed, however, we disagree with Appellant's interpretation and application of this exemption. Appellant focused too closely on the words "other than residential" and missed the broader intent. In particular, Appellant ignored the last portion of the section which states "as long a such property is continuously used by the owner thereof solely for residential purposes." Clearly the statute intends to protect

owner-users of residential property. In this case, subject was not being used for residential purposes. Presently subject is a bare lot being put to no use. Appellant's admission during cross examination that the property was not being put to residential use supports this conclusion.

Using standard appraisal and assessment methods the Assessor determined subject should be considered and valued as commercial property. Respondent noted Idaho Code § 63-208(1) which provides in pertinent part:

The rules promulgated by the state tax commission shall require each assessor to find market value for assessment purposes of all property . . . according to recognized appraisal methods and techniques as set forth by the state tax commission; provided, that the actual and functional use shall be a major consideration when determining market value for assessment purposes.

Respondent argued sound appraisal practice requires property be valued according to its highest and best use when market value is sought. To this point, the County referred to a prominent appraisal text that states the highest and best use "must be based on careful consideration of prevailing market conditions, trends affecting market participation and change, and the existing use of the subject property. The highest and best use may be defined as the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (edition unknown). Respondent noted this appraisal treatise is recognized by the State Tax Commission.

Appellant contended consideration must be given to the property owner's wishes, desires, and the historical use of the property. In this case, the historical use and assessment of subject is as a residential property. We agree a property's actual and functional use must be considered, this would be particularly germane to improved property. Here both parties agreed subject was

not being actively used. The functional use of the property could include either commercial or residential uses. Under the circumstances, the consideration of the property's highest and best use was proper and a normal part of the appraisal process. Of interest to this Board was subject being placed on the market as commercial property. Appellant may not have affirmatively taken steps to formally classify the property as commercial (e.g. apply for commercial use permit), but clearly the potential commercial use was a driving value factor inherent to subject.

Subject does not qualify for an exemption. The key question here is the market value of the property. Land is typically valued through the sales comparison approach to value.

Respondent presented three (3) sales involving properties located on Bryden Avenue and subject to the BASPA. The properties were between 46,368 and 140,573 square feet with corresponding sale prices of \$250,000 and \$425,000, or \$5.59 and \$3.02 per square foot respectively. Subject is 73,288 square feet and valued at \$293,152, or \$4.00 per square foot.

Appellant challenged the comparability of Sales 1 and 2 because they were assessed as residential properties for 2007. The special assessments, regardless of the BASPA, was consistent with the properties' current use. The prices paid for these properties reflect not just the current use but also the benefits that might be derived from the properties' future uses. In this regard, i.e. in light of the future use considerations, Sale 1 and Sale 2 were similar to the subject and could be reasonably used as comparable sales.

Sale 3 involved a property assessed as commercial property. It was 140,573 square feet and sold for \$425,000, or \$3.02 per square foot. Appellant urged this rate be applied to calculate subject's value. This property is nearly twice as large as subject. Economies of scale naturally suggest a lower price per square foot when comparing a larger property to a smaller property. Accordingly, we do not believe it would be proper to simply apply the price per square foot of

Sale 3 to arrive at subject's value. Subject's last listing price at also gives some insight into subject's January 1, 2007 market value.

Appellant carries the burden of proof to establish subject's value, as determined by the County, is erroneous. A preponderance of evidence shall suffice to sustain the burden of proof. Idaho Code § 63-511(4). The Board found the Assessor's appraisal of subject more persuasive and complete. Appellant presented no independent sales information or other appraisal evidence pertaining to subject's current market value. Appellant has failed to demonstrate by a preponderance of the evidence that subject's \$4.00 per square foot assessment rate is erroneous. For the reasons outlined above, the decision of the Nez Perce County Board of Equalization will be affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Nez Perce County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

MAILED APRIL 30, 2008